IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1407 OF 2003

Shri Ramlakhan Shivamurthy Tiwari .... Petitioner

V/s

1 The State of Maharashtra & Anr. . .... Respondents

Shri K.H. Giri for petitioners

Shri A.M. Shingarpure, APP for the State

Coram : V.M. Kanade,J.
Dated : 28.03.2005.

P.C. :-

. I have heard learned counsel for petitioners and APP for the State.

. The petitioners have taken an exception to the order passed by the Session Court in criminal revision applications No.519 of 2002 and 520 of 2002. By the judgment and order the Session Court dismissed the said revision criminal applications which were filed by the present petitioner challenged the order of the Magistrate Court taking cognisance of the complaint filed after the

expiry of period of limitation.

. The petitioner was convicted for an offence under sections 336, 337, 272, 273 read with section 114 of Indian Penal Code. The complaint was lodge to the police station on 26.8.1999 and chargesheet was filed on 15/11/2002.

. It is admitted position that all the offences which implicated the accused were punishable with imprisonment for a period of 6 months and imprisonment for a term not exceeding 1 year.The cognisance of offence has taken beyond period of one year. It is the case of petitioner that since no specific order was passed by the learned Magistrate condoning the delay in filing the complaint, the cognisance of offence taken by the learned Magistrate was barred by limitation.

. Learned counsel appearing on behalf of petitioner has invited my attention to findings given by Session Court in paragraph No.5 of the judgment in which Session Court placed reliance on the judgment of Supreme Court in the case of State of Himachal Pradesh vs. Tara Dutt and Another reported in 2000 CRI L.J. 485. It is submitted by learned counsel for petitioner that observation made by Session Court about ratio of the said judgment is incorrect. He has brought to my notice the observation made by Supreme Court in paragraph No.7 of the judgment which reads as under.

“This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court

taking cognizance , wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed top have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceed with the trial of the offence".

. In my view, Session Court has committed an error in coming to the conclusion that though no specific order was passed by Magistrate Court condoning the delay, there was implied condonation of delay. The Supreme Court in the case of State of Himachal Pradesh vs. Tara Dutt and Another (supra) on the contrary observed that the Court cannot be deemed to have taken cognizance by condoning the delay when there is no speaking order to that effect. The judgment and order of Session Court therefore is set aside and the matter is remanded back to Metropolitan Magistrate who shall first consider question of condonation of delay and pass a speaking order on the said aspect. Criminal Writ Petition is allowed in above terms.

(V.M. Kanade, J.)